

1 PAUL J. PASCUZZI, State Bar No. 148810
JASON E. RIOS, State Bar No. 190086
2 THOMAS R. PHINNEY, State Bar No. 159435
FELDERSTEIN FITZGERALD
3 WILLOUGHBY PASCUZZI & RIOS LLP
500 Capitol Mall, Suite 2250
4 Sacramento, CA 95814
Telephone: (916) 329-7400
5 Facsimile: (916) 329-7435
Email: ppascuzzi@ffwplaw.com
6 jrios@ffwplaw.com
tphinney@ffwplaw.com

7 ORI KATZ, State Bar No. 209561
8 ALAN H. MARTIN, State Bar No. 132301
SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
9 A Limited Liability Partnership
Including Professional Corporations
10 Four Embarcadero Center, 17th Floor
San Francisco, California 94111-4109
11 Telephone: (415) 434-9100
Facsimile: (415) 434-3947
12 Email: okatz@sheppardmullin.com
amartin@sheppardmullin.com

13 Attorneys for The Roman Catholic Archbishop of San Francisco

14 UNITED STATES BANKRUPTCY COURT

15 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

16 In re

Case No. 23-30564

17 THE ROMAN CATHOLIC ARCHBISHOP
18 OF SAN FRANCISCO,

Chapter 11

19 Debtor and
20 Debtor in Possession.

**DEBTOR'S SECOND STATUS UPDATE
REGARDING THE OFFICIAL
COMMITTEE OF UNSECURED
CREDITORS' *EX PARTE* APPLICATION
FOR ENTRY OF AN ORDER PURSUANT
TO BANKRUPTCY RULE 2004
AUTHORIZING ORAL EXAMINATION OF
THE DEBTOR; AND PRODUCTION OF
DOCUMENTS OF DEBTOR, PARISHES,
AND AFFILIATES' AND ORDERING
DEBTOR TO SUBMIT DECLARATION**

21
22
23
24
25
26 Judge: Hon. Dennis Montali
Date: December 14, 2023
27 Time: 1:30 p.m.
Place: Via ZoomGov
28

1 The Roman Catholic Archbishop of San Francisco, the debtor and debtor in possession (the
2 “RCASF” or the “Debtor”), in the above-captioned chapter 11 case (the “Bankruptcy Case”),
3 submits this second status report concerning its informal discovery efforts (“this Report” or “Second
4 Status Report”), consistent with the Court’s November 30, 2023 *Docket Text Order* (the “Docket
5 Order”).

6 **I. PRELIMINARY STATEMENT**

7 In connection with the Committee’s request for entry of an order under Rule 2004, the
8 Docket Order held the Debtor to two milestones: December 1 (provision of preliminary, written
9 objections and questions to the Committee) and December 12 (the filing of this Report). The Debtor
10 has met both milestones.

11 The Docket Order also indicated it would likely issue a Rule 2004 order following the
12 upcoming December 14 hearing. For the reasons discussed through this Report, the Debtor requests
13 that entry of such an order be subject to the following seven conditions:

- 14 (1) The Court should authorize requests for production (“RFPs”) of no more than sixty (60)
15 initial requests (down from the filed request of 138, with many having sub-parts), without
16 prejudice to the Committee’s right to make additional requests in the future as RFPs are
17 crossed off the list. Entering an order authorizing all 138 requests at once will result in
18 the Debtor attempting to “boil the ocean,” resulting in slow progress across the board.
 - 19 (2) The Court should initially limit the RFPs to a time period of 10 years (*i.e.*, 2013-2023)
20 without prejudice to the Committee’s right to seek a longer time period in the future.
 - 21 (3) The Court should authorize the Debtor to respond to RFPs on a rolling basis beginning
22 within two weeks of each request. Doing so takes into account the Debtor’s actual
23 internal resources.
 - 24 (4) The Court should sustain the Debtor’s objection [ECF No. 296, at 13] and not compel
25 the Debtor’s sworn declaration under Rule 2004.
- 26
27
28

1 (5) The Court should order that the “Abuse Claims” RFPs will be abated until the Committee
2 has reviewed the reproduction of the Debtor’s files from the judicial counsel coordinated
3 proceeding (the “JCCP”) and Attorney General investigation.

4 (6) Discovery against the non-debtor Catholic entities should not proceed until those entities
5 have retained counsel of their own. The Debtor understands this is in process.

6 (7) Any Rule 2004 order should make clear that there is no waiver of the Debtor’s right to
7 move for a protective order or otherwise object to the discovery sought via the Rule 2004
8 application, including on account of the objections raised in the Debtor’s prior filing
9 [ECF No. 296]. The Committee’s rights to respond to such objections and seek to
10 compel production would of course be preserved as well.

11 Finally, to summarize the comprehensive update on the Debtor’s discovery status (Section
12 II below), several key developments warrant attention. *Firstly*, the Debtor has proactively submitted
13 a proposed stipulated protective order to the Committee, accommodating numerous edits but
14 seeking a broader definition of “Confidential Information” in line with Ninth Circuit precedent.
15 Notably, discussions between the parties, spanning from November 29 to December 11, culminated
16 in the Debtor’s revised version of the protective order, which emphasizes the critical need for clarity
17 in defining confidential information, particularly concerning highly sensitive data tied to
18 individuals’ legally protected privacy rights.

19 *Secondly*, the Debtor’s diligent efforts in document collection are underscored, with tens-of-
20 thousands of documents already amassed and ongoing daily work to procure additional responsive
21 materials. The Debtor has communicated proactively with the Committee, exemplified by the
22 prompt production of redacted insurance policies, showcasing a commitment to transparency.
23 Anticipated productions, covering various categories such as Abuse Claims and financial records,
24 underscore the Debtor’s dedication to fulfilling requests while acknowledging potential delays
25 contingent on ongoing negotiations and unforeseen challenges during the year-end holidays.

26 *Lastly*, amidst ongoing discussions, if the parties are to minimize the need for future motion
27 practice (seeking protective orders or to compel) it is imperative that the Committee provides more
28

1 detailed and narrowed requests for production, as the Debtor seeks clarity on specific Priority
2 Requests. The collaborative approach emphasized in ongoing communications is vital to ensure an
3 efficient and focused discovery process, avoiding unnecessary drain on estate resources. This update
4 sets the stage for a more narrowly tailored and phrased discovery framework proposed by the Debtor
5 below, premised on the Court's entry of what will presumably be a final stipulated protective order.

6 **II. DEBTOR'S DETAILED DISCOVERY STATUS UPDATE**

7 **A. The Debtor Has Provided the Committee a Proposed, Stipulated Protective Order that** 8 **Addresses the Needs of the Case and Accepts All of the Committee's Edits Except the** 9 **Debtor Asks the Court to Define "Confidential Information" More Broadly, Consistent** 10 **with Ninth Circuit Precedent.**

11 On November 29, 2023, counsel for the Debtor provided its proposed draft stipulated
12 protective order to the Committee's counsel in continuation of the parties' conferrals on that topic.¹

13 On December 4, 2023, the Committee's counsel provided its proposed edits to the draft
14 protective order.

15 Counsel for the parties conferred the following afternoon, December 5, 2023, to discuss the
16 Committee's edits, including the Committee's striking of a two-level protective order in favor of a
17 single level order and edits to the definition of "confidential information," both of which were
18 previously agreed to by the plaintiffs (and counsel for the plaintiffs) in the JCCP state court
19 proceeding, many of whom are claimants in this case.

20 Between December 6, 2023 and December 11, 2023, the Debtor's restructuring counsel
21 worked with the Debtor's litigation counsel, Debtor's General Counsel, as well as numerous other
22 internal and legal stakeholders to ensure the definition of "confidential information" sufficiently
23 covers the types of documents and information likely to be produced in response to the Committee's
24 requests. In that process, the Debtor's professionals carefully compared the Committee's RFPs
25 (including the clarification, if any, discussed in Section C below), with the definition of "confidential
26 information." The professionals took into express consideration the Committee's verbal editorial
27 comments shared during the December 5 meet-and-confer.

28 ¹ Prior to this November 29, 2023 draft—and primarily before the Committee filed its Application and sought to conduct
discovery entirely through formal processes, rules, and procedures—the parties were contemplating a confidentiality
agreement.

1 On December 11, 2023, the Debtor's counsel provided a new, revised version of the
2 stipulated protective order, asking the Committee counsel to focus on paragraph 12's definition of
3 "confidential information." The Debtor otherwise accepted all of the Committee's proposed edits.
4 Given the Committee's preference for a single level protective order in lieu of the two-level
5 protective order being used in the JCCP proceeding, it is vital that the Debtor be able to designate
6 the highly sensitive information it is being asked to produce as confidential in order to protect
7 individuals' legally protected privacy rights.

8 As an example, the Committee seeks *all* discovery files produced to plaintiffs in the JCCP
9 proceeding. Therefore, Debtor's counsel believes it's essential to ensure sufficient uniformity of
10 "confidential information" definitions between the two proceedings.

11 The Debtor also believes it is imperative that the Court's controlling protective order
12 robustly safeguard the privacy rights of clergy members, particularly in matters pertaining to their
13 spirituality, including their formation process, encompassing the deeply personal aspects of an
14 individual's faith and acknowledgment that clergy members are afforded protection under the First
15 Amendment.

16 Similarly, the Committee's requests focus on certain Abuse Claims, whether or not
17 substantiated. The Ninth Circuit has specifically considered the question of sealing bankruptcy court
18 records concerning alleged abuse claims against clergy. *See Father M. v. Various Tort Claimants*
19 *(In re Roman Catholic Archbishop of Portland in Oregon)*, 661 F.3d 417 (9th Cir. 2011). In that
20 case, the Ninth Circuit held that 11 U.S.C. § 107, "supplants" and "preempts" any common law
21 right to privacy. *Id.* at 430-31. Under this test, therefore, were the Committee to challenge a
22 designation—the court would first consider whether a particularized harm will result from the
23 disclosure. *Id.* at 424. If so, the Court must then proceed to *balance* the public and private interests
24 to decide whether to maintain a protective order over that document. *Id.*

1 The Debtor believes that the standards imposed by Federal Rule of Civil Procedure 26 (made
2 applicable by Federal Rule of Bankruptcy Procedure 7026), together with 11 U.S.C. § 107 and
3 applicable law should be reflected in the Court's protective order in this action.²

4 On December 11, 2023, counsel for the Debtor provided a revised draft of the protective
5 order with a definition of confidential information that is consistent with the JCCP protective order,
6 the protective order entered in the Archdiocese of Oakland's bankruptcy case, and Ninth Circuit
7 case law. Accordingly, the Debtor believes its proposed definition of confidential information
8 should be acceptable to the Committee, as well as the Court, and awaits any feedback from the
9 Committee. The Debtor hopes a final stipulated protective order can be presented to the Court in the
10 next couple of days.

11 **B. The Debtor Has Collected Tens-of-Thousands of Documents, and Continues to Work**
12 **Daily to Collect More.**

13 The Debtor, its counsel and financial professionals have worked together on a daily basis to
14 investigate the existence of responsive documents, identify potential custodians and repositories of
15 documents, collect documents for review, and prepare documents for production in response to not
16 only the Priority Requests but also certain of the remaining Requests for which responsive
17 documents were readily identified and available.

18 Debtor's counsel communicated with Committee Counsel by email, text message and in-
19 person conference on Friday, December 1, 2023 regarding its ready production of the Debtor's
20 redacted insurance policies. On December 4, 2023, the Committee's counsel agreed it would treat
21 the insurance policy documents as if designated confidential under any protective order that may be
22

23
24 ² As a point of reference for the Court—the order in the Oakland matter begins: “Confidential Material: A Producing
25 Person or Designating Party may designate Discovery Material as “Confidential Material” if such Producing Person
26 believes in good faith (or with respect to documents received from another person or entity, has been reasonably advised
27 by such other person or entity) that: (i) such Discovery Material (A) constitutes or contains nonpublic proprietary or
28 confidential technical, business, financial, personal or other information of a nature that can be protected under 11
U.S.C. § 107(b)(1), Bankruptcy Rules 7026 or 9014 9018, or and Federal Rule of Civil Procedure 26(c); (B) constitutes
or contains information that the court in this Chapter 11 Case has determined must be protected under 11 U.S.C. §
107(b)(2) or Bankruptcy Rule 9018; (C) is subject by law or by contract to a legally protected right of privacy; or (D)
is information that is believed to unreasonably invade the privacy of an individual; or (ii) the Producing Person (A) is
under a preexisting obligation to a third-party to treat such Discovery Material as confidential; or (B) has in good faith
been requested by a Designating Party to so designate such Discovery Material on the grounds that such other Party
considers such Discovery Material to contain information that is confidential or proprietary to such Party.”

1 entered in this case, and the redacted insurance policies were produced that day. The Debtor then
2 produced unredacted copies of those policies on the following day, December 5, 2023.

3 Pursuant to its other ongoing efforts, the Debtor anticipates producing thousands of pages of
4 documents and substantial amounts of financial data for not only itself but the parishes and certain
5 affiliates, by the end of the month and the beginning of January 2024. Delays in this timetable should
6 only be a result of (i) continued delay in negotiating a mutually acceptable protective order,
7 (ii) potential redactions needed to remove personal identifying information, and/or (iii) unforeseen
8 issues that might arise as we approach the year-end holidays.

9 Specifically, the following categories of documents are in the queue for review and
10 production in the near term in response to the Committee's Priority Requests:

- 11 • Thousands of pages of documents produced in the state court JCCP proceedings to
12 individual plaintiffs, as applicable, responsive to the Abuse Claims requests;
- 13 • Over 15,000 pages of documents produced to the California Attorney General responsive
14 to the Abuse Claims requests;
- 15 • Articles of Incorporation for the Debtor and certain affiliates;
- 16 • Tens of policies and procedures responsive to multiple of the Requests;
- 17 • Meeting minutes for the Finance Council, Investment Committee and Audit Committee
18 from 2016 through present, which are available in electronic format, subject to
19 continuing efforts to identify meeting minutes from years prior to 2016;
- 20 • A Chancery organizational chart;
- 21 • A list of all of the parishes and an explanation of two parishes which previously merged;
- 22 • Audited annual financials for the Debtor, the Cemeteries, and St. Patrick's Seminary for
23 the past 10 years;
- 24 • The Debtor's unaudited quarterly financial reports for 2014 through present;
- 25 • Unaudited annual financials for the parishes, mostly in Excel format as requested (except
26 where unavailable) from 2014 through present. These Excels were prepared non-debtors
27 but appear to include balance sheets, P&L, and other schedules;

- 1 • Large flat file extracts in Excel of the Debtor's transactional accounting data, *i.e.*, its
2 general ledger, customer ledger, and vendor ledger from its accounting systems for the
3 past 10 years. The Debtor will also produce a chart of accounts to assist the Committee
4 in its review.
- 5 • In addition, certain of the schedules or lists of data requested by the Priority Requests
6 simply do not exist. As an initial effort to create those lists of information in the spirit of
7 cooperation endeavored by the current informal discovery process, the Debtor is
8 endeavoring to create a list of the entities in which the Archbishop, Chancellor and Vicar
9 General have served as officers or directors in the past year. Similarly, the Debtor is
10 creating a list of all current committees, councils and similar groups pertaining to the
11 Debtor's operations that presently exist.

12 On top of these foregoing efforts, the Debtor is also collecting and queuing up the following
13 categories of documents and information in response to other of the *non-priority* Requests, such as:

- 14 • AAA assessment documents from 2018 through present, subject to supplementation of
15 the AAA assessments for prior years;
- 16 • Rental and Investment Tax documents;
- 17 • Documents pertaining to charges to parishes and affiliates for payroll services from 2014
18 through present;
- 19 • Documents pertaining to institutional loans, if any, provided by the Debtor to affiliates;
- 20 • Documents relating to the Debtor's write off of AAA debt for one of the parishes; and
- 21 • Documents related to lay pension, insurance, priest pension, and workers comp.

22 As reflected above, the Debtor is rapidly collecting responsive documents as fast as it can
23 triage responding to the Requests. The Debtor continues to make progress on this front on a daily
24 basis and requests the Court allow it to continue to do so through the current informal discovery
25 process and free of the need and hindrance of having to prepare formal discovery objections and
26 responses and divert resources to that effort.

1 **C. The Committee’s Request for “SQL Database” Is Not Possible and Exceeds Rule 2004.**

2 In the parties’ conferrals, the Committee has stated—without any analysis of the data
3 extracts—that it simply believes based on its perception of other cases, regarding other unrelated
4 entities, that it needs the Debtor’s data in a different format other than the extracts and reports
5 allowed by the Debtor’s software. Namely, the Committee continued to demand the Debtor produce
6 a “sql database.”

7 The Debtor’s representatives have investigated this request. It is not possible. In specific, the
8 Debtor contacted Sage (regarding its current Intacct database) and was told this was an unusual
9 request and Sage could not provide a copy of the database requested. The Sage representative told
10 the Debtor representative to extract the data—which is what the Debtor has since done and stands
11 ready to produce with the appropriate protective order. *See supra*. The Debtor believes the most
12 practical, cost effective, and useful format in which to provide the data to the Committee is via Excel
13 flat files.

14 **D. The Committee Should Limit the Committee’s Initial RFPs to a 10-year Lookback.**

15 On Friday, December 1, 2023, counsel for the Debtor provided the Committee specific
16 requests for clarification for 11 of the Committee’s Priority Requests, many of which were already
17 set forth in the Debtor’s Objection. Counsel for the Debtor further proposed that, in response to the
18 Committee’s 30 Requests relating to Abuse Claims, the Debtor first reproduce (with any additional
19 necessary redactions) the tens-of-thousands of pages of documents produced as part of the preceding
20 state court JCCP proceeding and, separately, to the California Attorney General and would confer
21 as to any additional information sought following the Committee’s review of those documents. And,
22 as a general matter, counsel for the Debtor proposed the Requests generally be limited to a 10-year
23 lookback period subject to the Committee’s feedback as to which requests, if any, should not be so
24 limited because it would impair the Committee’s initial, threshold work.

25 On December 5, the Committee provided its responses to the Debtor’s requests for
26 clarification. As to the Debtor’s more general requests to limit the Requests and stage its responses,
27 the Committee rejected the proposed ten-year lookback period for its 30 Abuse Claim requests and
28

1 the Debtor's audited financial statements. It also proposed a 15-year initial lookback period for its
2 requests for lists of all of the Debtor's and Affiliates' bank, money market, investment, brokerage,
3 or other accounts; all guidelines or policies for the parishes related to any subject; and meeting
4 minutes for the Debtor's finance council and presbyteral council, while accepting an initial 10-year
5 lookback period for the remaining Priority Requests, though it propounded additional discovery
6 requests in "exchange" for doing so in specific instances. The Committee's counsel also agreed to
7 the Debtor's proposed approach for responding to the Abuse Claims requests except that it
8 demanded the "prompt production" of all persons "credibly accused" of sexual abuse since 1941.

9 **E. The Committee Should be Mandated to Provide More Detailed RFPs to Facilitate the**
10 **Debtor's Understanding and Prevent Unnecessary Waste of Estate Resources.**

11 In light of the Debtor's specific inquiries aimed at gaining clarity on 11 Priority Requests
12 and striving to comprehend the actual information sought, the Committee has refrained from
13 narrowing or constraining four of these requests. Notably, these include the Committee's continued
14 demands for:

- 15 • "all . . . norms . . . operating guidelines . . . [and] instructions . . . created by the
16 Debtor";
- 17 • "all guidelines or policies for the parishes . . . relating to any subject . . ."; and
- 18 • lists of all entities in which the Archbishop, Chancellor, or Vicar General have been
19 an officer or director and of all committees, councils, or "similar groups" of the
20 Debtor (which necessitate creation from scratch as these lists do not currently exist).

21 During a telephonic conference on Friday, December 8, counsel for both parties engaged in
22 discussions, during which the Debtor's counsel provided a verbal update on the ongoing efforts to
23 respond to the Committee's requests. This update included categories of documents being prepared
24 for production and anticipated timelines. Subsequently, on December 11, 2023, counsel for the
25 Debtor formalized this update through email and sought additional guidance from the Committee.

26 The Debtor has made substantial progress in collecting responsive documents, a summary
27 of which is provided below. Counsel for the Debtor is committed to providing ongoing updates to
28

1 the Committee on the progress achieved and seeks to maintain open communication regarding the
2 interpretation and intent of specific Priority Requests. It is imperative that the Committee, in the
3 interest of efficiency and resource conservation, narrow down and provide more detailed RFPs (no
4 more than 60 total) to guide the Debtor's responsive efforts effectively. This collaborative approach
5 ensures a streamlined and focused exchange of information, preventing unnecessary expenditure of
6 estate resources and expediting the discovery process.

7 Dated: December 12, 2023

FELDERSTEIN FITZGERALD WILLOUGHBY
PASCUZZI & RIOS LLP

8
9 By /s/ Paul J. Pascuzzi
10 PAUL J. PASCUZZI
11 JASON E. RIOS
12 THOMAS R. PHINNEY
13 Attorneys for The Roman Catholic
Archbishop of San Francisco

14 Dated: December 12, 2023

15 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

16
17 By /s/ Ori Katz
18 ORI KATZ
ALAN H. MARTIN
19 Attorneys for The Roman Catholic
20 Archbishop of San Francisco
21
22
23
24
25
26
27
28